

**FINDING OF NO SIGNIFICANT IMPACT (FONSI)  
and  
DECISION RECORD (DR)**

**KIGER GORGE NO LIVESTOCK GRAZING BOUNDARY FENCE**

**Revision to  
DECISION RECORD AND ENVIRONMENTAL ASSESSMENT  
EA OR-027-01-27**

**INTRODUCTION:**

The Steens Mountain Cooperative Management and Protection Act of 2000 (The Act) contains the objectives (Section 102 (b)) “..to maintain and enhance the cooperative and innovative management projects, programs and agreements between tribal, public and private interests in the Cooperative Management and Protection Area,.. to promote grazing, recreation, historic, and other uses that are sustainable;..” The Act designates a Wilderness area and establishes a “no livestock grazing area” within the Wilderness. Section 113(e)(2) directs the Secretary of the Interior to “..be responsible for installing and maintaining any fencing required for resource protection within the designated no livestock grazing area.” The primary objective of the fence is to exclude livestock.

An Environmental Assessment (EA OR-027-01-27) was completed on April 21 2001 that identified two alternative fence designs for the Kiger Gorge No Livestock Grazing Boundary Fence. The Woven Wood Fence design was selected in the accompanying decision record (July 27, 2001). This revision to that EA and new Decision Record identifies additional fence designs, including a Metal Panel Fence design, and identifies an opportunity to construct and maintain the fence through a Cooperative Management Agreement (CMA) that places many of the impacts of the project off of the Wilderness Area and onto private land. The Act specifically identifies Cooperative Management Agreements as an acceptable method to achieve public and private objectives within the CMPA (Section 121.)

During the design phase that precedes fence construction several field reviews of the proposed boundary fence location and consideration of fence design elevated a concern that a 42 inch Woven Wood Fence would not be effective in excluding livestock. The livestock that have historically used the Kiger Gorge have become imprinted with a use pattern that includes moving upstream within the gorge during the grazing season. Cattle are creatures of this imprinted behavior and will test a new fence to force passage. The question was raised, what type of fence could effectively exclude livestock in this area? And, in consideration of the wildlife passage and Wilderness area that would be adjacent to the fence, how could this effective livestock fence be designed to assure that impacts to wildlife and to Wilderness users were mitigated to the extent possible.

Discussions with the adjacent landowner, Fred Otley, during the last six months, identified his

concern that the wood fence would not successfully hold his cattle downstream. Otley's specific concern was the susceptibility of a wooden fence to the relatively frequent wildfires and snow and debris landslides that occur naturally within Kiger Gorge. This discussion resulted in an opportunity to enter into a Cooperative Management Agreement (CMA) that would authorize the landowners themselves, Otley Brothers Ranch, to perform the construction and maintenance of the fence.

The Secretary of the Interior, through the BLM, was given the responsibility in the Act to construct and maintain a fence that will effectively exclude livestock. Typically this would be performed through a construction contract, and an annual maintenance contract, if it could not be scheduled using existing BLM staff. A CMA is a reasonable alternative to a contract for this purpose.

The Oregon Department of Fish and Wildlife participated in a field review of the proposed fence modification with BLM personnel and the landowner. As long as elk calf and deer fawn passage could be accomplished, ODFW personnel on site concurred with the proposed increase in height and the Metal Panel Fence design.

Comments received from the public on the original EA included,

**Wild Wilderness** comment: "Please don't start cutting corners and managing the Steens Mountain Wilderness as a second class Wilderness so that it can be cow-free or cow-free with a minimum of management effort or cost on the part of the BLM. To do so would be to weaken the Wilderness Act and to reduce the standard to wish designate Wildernesses all across America will be managed."

This new Decision confirms that a fence will be built, as required by the Act, and provides for a design that will be more effective than the original design.

**Robert Moore** comment: "It's not acceptable or allowed to degrade scenic wilderness qualities in any fashion, which is what would happen if the proposed projects are installed."

This new Decision works to reduce the impacts to Wilderness by placing some of the construction of the Kiger Gorge fence, as well as most of the access, onto private lands and off of Wilderness.

**Wilderness Watch** comment: "The EA should also address the future maintenance of the proposed fences and water developments, including the tools and modes of access that will be allowed for future monitoring and maintenance within wilderness."

This new Decision addresses access and tools for construction and maintenance.

**Alvord Coalition** comment: "...The BLM may be proposing helicopter use to expedite the process; in this case, we recommend that the BLM negotiate with landowners benefiting from the range developments to land on adjacent private lands. ..."

This new Decision provides for helicopter loads to cross private and non-Wilderness lands, and

land on private lands thus avoiding Wilderness.

**Alvord Coalition** comment: “The EA proposes the construction of a wood weave fence to prevent livestock grazing in upper Kiger Gorge. The EA states that the proposed action “would (affect) cow elk with new calves as the calves would not be able to negotiate this fence design. Separation of calve (sic) elk from their mothers would allow for greater predation opportunities and decrease productivity of the herd.” The EA states that, on the other hand, the let-down fence alternative will have “no impacts to wildlife.” (p. 44.)”

This new Decision mitigates wildlife passage concerns by providing a design incorporating passage for young, and changes in height based on the realistic needs of a livestock fence in this location.

**Oregon Department of Fish and Wildlife** comment: “At the no livestock grazing boundary we feel that the Alternative is the best selection as a workable fence. The construction and maintenance of a wood weave fence has the possibility of numerous negative impacts. A let-down wire fence will be down for much of the year, suffer very little damage during winter, and have very little impact to wildlife passage when built as described in the Alternative.”

This new Decision mitigates wildlife passage concerns. A field visit with Oregon Department of Fish and Wildlife resulted in this new design.

**Stacy L. Davies** comment: “I feel a wood weave fence is necessary in this location. A wire fence is not likely to control the cattle in this area.”

This new Decision changes the design to control cattle in a way that will be more effective than a woven wood fence.

## **SUMMARY OF PROPOSED ACTION:**

The Proposed Action, a revision to the “Projects for Implementation of the Steens Mountain Cooperative Management and Protection Act of 2000 Environmental Assessment” specific to the Kiger Gorge No Livestock Grazing Fence, is to construct and maintain a Metal Panel Fence, to be located partially on private land and partially on public land, using a Cooperative Management Agreement between BLM and the Otley Brothers Ranch. The fence would be constructed partially on private land (approximately 1/2 mile), partially on BLM Wilderness (approximately 1/2 mile on the east side of the gorge) and partially on BLM Wilderness Study Area (approximately 1/4 mile on the west side of the gorge.) An easement would be granted to BLM to allow for the construction, maintenance and monitoring of the fence within private lands. An easement across BLM non-wilderness lands along an existing trail, including the permission to maintain the trail for safe and adequate access, would be granted to the CMA partner to allow for access for construction and maintenance in the far downstream portion of Kiger Gorge. No mechanized equipment will be used in the wilderness, except as may be determined necessary to haul materials onto steep gorge walls after a minimum tool analysis has been completed. The fence will be of a height necessary to preclude livestock from entering the No Livestock Grazing portion of the Steens Mountain Wilderness (54 inches on the bottom of

the canyon and reduced in height through 48 inches to 42 inches as the slope becomes steep). Elk calf/deer fawn crawl spaces will be engineered into the panel fence at least every 120 feet. Large rocks, posts and steel cable will be used where necessary to prevent animals from pushing, moving or lifting the fence which is similar with other alternatives. In addition, at least one rock crossing on private land will be built with equipment to allow for rapid elk passage if they are spooked and stampeded. The fence will be painted dull green to minimize visibility to human visitors, while still assuring wildlife can see the fence. Temporary flagging will be installed on the fence by ODFW to familiarize elk herds with the new fence. Monitoring of fence effectiveness and its ability to withstand natural snow and debris slides, elk stampedes, or other disturbances, may result in modifications to the design and fence type. Minimal modifications such as adding rock crossings to aid wildlife passage, or small portions of let down wire fence or wood type fence may be added as deemed necessary during construction or following monitoring. Initial construction and material costs would be higher than barbwire but less than wood weave or triangle pole panels and maintenance costs would be less than all other alternatives. The life of the fence would be somewhat unlimited along most of the fence allowing it to blend into vegetation growth with less maintenance activities.

The original decision was for a 42 inch Wood Weave Fence to be constructed and maintained entirely on BLM Wilderness and Wilderness Study Area lands. In addition to the Metal Panel Fence, other designs were considered.

Revised Alternative: Wood Weave with Height Increase: Consultation with livestock and range managers indicate that a 54 inch high fence on the canyon bottom and near the stream is necessary to effectively stop cattle from jumping over the fence. They believe the 42 inch fence specific in the original decision is insufficient to stop cattle from entering the cattle-free area. They believe the height of the fence can be reduced as the slope or steepness increases. Some wildlife biologists believe elk calves and deer fawns will have trouble crossing this fence due to the height and because they cannot crawl through due to the tight rail spacing. A properly built rock and pole crossing or break in the wood weave every 100 to 150 feet should mitigate passage problems but building the rock crossing by hand would be difficult and expensive if done in the Wilderness. However, this alternative does not address the issue of the likelihood of fire or snow or debris slides that may affect a wood weave fence. Mitigation could include pulling the fence back onto private lands which would allow for more effective construction of rock crossings and regular fire proofing and fuel reductions would be possible due to the allowable use of equipment or mechanical alternative practices on private lands. Due to the amount of fine fuels some mechanical treatment or excavation would be necessary at least two times a fire season and the poor access would make these activities very difficult and expensive even if the fence were located on private lands. The increase in height of the fence would not substantially change the visibility of the fence but moving the fence back on private land would substantially decrease how far the fence goes up the canyon sides on the west segment because the fence could angle down canyon to two rims lower on the hillside. Increasing the height of the fence greatly increases the construction and material cost of the fence. An agreement to construct, maintain and locate the fence on private land may be possible if the height and standard of the fence sufficiently prevents cattle from entering the No Livestock Grazing area. This alternative is not selected because it does not address wildlife passage or ability to withstand fire or snow/debris slides to the extent that the Metal Panel Fence design would.

New Alternative: Triangle Pole Panels. Triangle pole designs may be effective in preventing cattle from entering the cattle-free area but will not last many years and would require considerable maintenance after five years to be effective. The wider rail spacing should allow for deer fawn and elk calf passage. The potential of the fence burning up in the future is high although fire-proofing is possible as discussed in the revised wood weave alternative. This alternative is not selected.

## **DECISION:**

As a result of design discussions in the field between BLM personnel, the private landowner and livestock manager, and Oregon Department of Wildlife personnel, and the environmental analysis presented in the previous EA, it is my decision to approve the Metal Panel Fence design for the Kiger Gorge No Livestock Grazing Boundary Fence. The rationale for the FONSI supports this new decision. As the main component of the Proposed Action is preventing livestock use of the Kiger Gorge portion of the Livestock Free Wilderness it is necessary to construct and maintain an adequate fence in consideration of natural disturbances, Wilderness constraints to fence construction and maintenance, and mitigation of wildlife passage. The Proposed Action, coupled with mitigation measures incorporated into the fence design and access route, have led to my decision that all practicable means to avoid or minimize environmental harm and unnecessary and undue degradation of the public land and Wilderness values have been adopted. Selection of the previously approved 42 inch Woven Wood Fence would not meet the main objective and would require excessive maintenance. Impacts of the new design are within the scope of the previous analysis. This decision is consistent with the Steens Mountain Cooperative Management and Protection Act of 2000.

All resource values have been evaluated for cumulative impacts. It has been determined that cumulative impacts would be negligible for most resources. The Proposed Action would result in short term incremental impacts to Wilderness, vegetation and wildlife resources, as well as positive long term benefits to the livestock free portion of the Wilderness.

/S/ Karla Bird

July 24, 2003

Karla Bird  
Field Manager, Andrews Resource Area

Date

## **FINDING OF NO SIGNIFICANT IMPACT:**

Based on the analysis of potential environmental impacts detailed in the original EA OR-027-01-27, I have determined that the impacts of the modifications described in the Revised Proposed Action for the Kiger Gorge No Livestock Grazing Boundary Fence, when coupled with mitigation measures presented and detailed in the Decision Record in this document, are not significant and do not exceed the scope of impacts addressed in the original EA. Therefore an environmental impact statement is not required.

### **Rationale:**

1. The primary purpose for the Kiger Gorge No Livestock Grazing Boundary Fence is to preclude cattle from the Livestock Free Wilderness. This is required by the Steens Mountain Cooperative Management and Protection Act. The 54 inch Metal Panel Fence design will most effectively meet this primary purpose. The previously selected 42 inch Woven Wood Fence design would not be as effective due to potential loss and damage due to natural disturbances and the limited height. A 54 inch fence would be required to prevent cattle that have been used to traveling upstream within the gorge from jumping a new fence to continue their historic foraging patterns. A Metal Panel Fence design would be more likely to withstand wildfire, snow and debris slides, and other disturbances.
2. While the Act requires BLM to construct and maintain No Livestock Boundary Fences, a main emphasis of the fence design is to minimize effects to Wilderness during construction and maintenance activities, and should be a consideration of the fence design itself. The Metal Panel Fence design would be constructed partially on private land (approximately ½ mile of the approximate 1 ¼ mile length) thereby reducing effects to Wilderness by 40%.) Placing the fence slightly downstream and onto private lands would reduce the overall length of the fence as topography of the canyon hosts rock outcrops that can be used to anchor and augment the fence in the revised location. In addition, access to construct and maintain the fence would be provided by an easement through private land, and through BLM non-wilderness public lands lower in Kiger Gorge along an existing trail. Motorized and mechanized equipment would be used only on non-Wilderness lands, or on Wilderness only after appropriate limited tool analysis. The previously selected Woven Wood Fence identified travel by construction and maintenance personnel through Wilderness. The private landowner is willing to provide BLM an easement for construction, maintenance, location and monitoring of a portion of this fence across private lands as long as the design will meet the intent to preclude livestock. The private landowner agrees that the 54 inch Metal Panel Fence design will be more effective than the 42 inch Woven Wood Fence.
3. Visibility of the fence is an issue, and while a Woven Wood Fence design might seem more in keeping with Wilderness, any constructed fence will show the impact and presence of man on the landscape. The metal panels will be painted a non-reflective, dull green color to best blend with the riparian gorge vegetation. The metal bars on the panels will not exceed the average width of woven wood rails, and should not exceed the impacts discussed in the original EA. At least 40 percent of the length of the fence will be placed outside of the Wilderness onto private lands, although it will continue to be visible from within the Wilderness.

4. The selected Metal Panel Fence design will not exceed, and in some cases will reduce the impacts described in the original EA on the critical elements including ACECs, Wild and Scenic Rivers, Wilderness and Wilderness Study Areas.

**The original EA** determined that the Woven Wood Fence would have the following impacts: **ACECs:** “no impacts to the scenic vistas in the Steens ACEC since there would be sufficient screening from topography and vegetation to block the view of the Kiger No Livestock Grazing Fence from the main Kiger Gorge Viewpoint or other viewpoints along the upper edge of the gorge. However, it would be visible from points on the Kiger Gorge rim within 1 to 2 miles of the fence location. **Wild and Scenic Rivers:** “These fences would be at the same location at the lower end of the Wild and Scenic River corridor. Construction of these fences would affect the Scenic and Recreational ORVs through the visual and physical presence of the fences. The same fences would also affect the Vegetation and Fisheries ORVs through the removal of livestock grazing in the wild river corridor.” **Wilderness and Wilderness Study Areas:** The fencing projects in the wilderness or WSAs would be in conflict with the opportunities for primitive and unconfined recreation and the retention of naturalness of the area. Depending on the method of transporting fence materials to some of the remote locations (sling load with helicopter, packing on foot or horseback) for proposed fences, there would be a loss of naturalness and solitude during these times. Transport of these materials would be accomplished at times of low visitor use. This loss of solitude would extend into the construction of the fence as posts are pounded into the ground, barbed wire strung or rocks piled by a group of people. The fence posts would be all one color instead of having white tops to help blend in with the landscape. There would be a loss of naturalness for 1 to 2 years from flagging that would be put on the new fences for recognition by wildlife and wild horses. The overall impacts of these fences is to keep livestock out of the no livestock grazing area which would reduce human-livestock interactions and contribute to the naturalness and solitude of the area.

5. Wildlife passage is an important consideration. This selection of the Metal Panel Fence design, with built in deer fawn/elk calf crawl spaces built in at least every 120 feet, a rock crossing to be constructed to allow rapid elk passage on the private land portion, and the expressed plan to monitor and continue to mitigate any actual additional wildlife impacts through minor fence modifications (adding rock crawls, let down panels) will reduce the effects to wildlife when compared to the Woven Wood Fence. An additional mitigation is to assure square panels, rather than rounded panels are used, to eliminate the potential for deer or elk to catch a foot in the gaps between round panels.

**The original EA described impacts to Wildlife:** (The Woven Wood Fence) “would have an effect on migrating elk since the location would be along a migration route to the upper part of Kiger Gorge where approximately 200 head of elk summer. This would effect cow elk with new calves as the calves would not be able to negotiate this fence design. Elk would be able to go around the end but usually go over or under a fence. Separation of calve elk from their mothers would allow for greater predation opportunities and decrease productivity of the herd. “ (The Letdown Wire Fence) “...would allow wildlife, especially cow elk with calves, to pass through this area, and not be blocked by the fence.....There should be no impacts to wildlife from this fence design.”

6. Effects to vegetation from fence construction would continue to be short term in nature. Even where motorized or mechanized equipment will be used to facilitate Metal Panel Fence construction, the impacts will be to vegetation on private lands where clearing brush for construction will occur. These impacts to private lands will not be significant and will be short term in nature as grass, brush and aspen will regrow rapidly in this riparian environment. There may be some longer term effects to vegetation on private lands where fence maintenance requirements of the private landowner may provide for a conversion to grass cover. Approximately 1/3 of the private land portion of the fence location contains brush and trees. The remaining 2/3 is currently a grass vegetation type. Public land portions of the fence location include grass, brush and aspen, and are in the non-riparian portion of the fence location. Brush and aspen would be cleared only as required to install the fence panels. It is apparent from visiting the site that even the Woven Wood Fence and Let-Down Wire Fence alternatives would require removal of some brush and aspen to construct those fence types.

**The original EA described impacts to Vegetation:** “Refer to the Wildhorse Canyon Proposed Action...The construction of the fence would disturb the vegetation due to trampling along the new fenceline as workers walk back and forth. No vegetation will be cleared from the fenceline so no long-term effects are anticipated from construction. Trails from livestock may be evident along one side of the fencelines after a period of time. The timing, duration and intensity of livestock use would determine the effect of this fence on vegetation.”

7. Visual Resources: (see discussion in item 3 above): **The original EA describes impacts to the Visual Resources:** “The proposed action and alternative would both be located in a Class I area and would be similar to those effects discussed for the Eusabio Ridge Fence. The main difference between the two alternatives being less noticeable from shorter distances than the proposed action.”

8. Recreation: Access to construct and maintain the fence would occur through non-Wilderness public lands, and through private lands, reducing the impacts to recreating Wilderness visitors from that described for the Woven Wood Fence. **The original EA describes impacts to Recreation:** The location of the proposed action and the alternative are the same so the impacts to recreationists are expected to be the same. (“...minor impediment for hikers, hunters, and other recreational users. The fences would be designed to allow hikers and others foot access while excluding livestock access. Gates would be installed in fences to allow recreational horse use access to land inside the no livestock grazing area.”)

9. Reasonably Forseeable Future Actions. Construction, maintenance and monitored use of the proposed Metal Panel Fence may result in future identification of necessary modifications. These minor modifications of the fence design are incorporated into this decision where effects from modifications can be mitigated to reduce the effects of the fence on the specific resource, or where the effects will not exceed those identified in the original EA or modified Decision Record.

## **Mitigation and Monitoring:**



Mitigating measures have been incorporated into the Proposed Action as stated. Implementation monitoring will occur during construction to assure identified measures are followed.

Monitoring of the effectiveness of the fence design and maintenance will occur each year for the first three years, and in following years in accordance with the amount and type of concerns that may be noted. Flexibility in construction and maintenance will be allowed as long as effects to resources do not exceed those identified in the original EA or modified Decision Record.

Approved changes will be documented in the project file.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and Form 1842-1. If an appeal is filed, your notice of appeal must be filed in the Burns District Office, 28910 Hwy 20 West, Hines, OR 97738 by August 24, 2003. The appellant has the burden of showing that the decision appealed is in error.

If you wish to file a petition, pursuant to regulation 43 CFR 4.21, for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for stay must accompany your notice of appeal. A petition for stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party names in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate a stay should be granted.

#### Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied.
- (2) The likelihood of the appellant's success on the merits.
- (3) The likelihood of immediate and irreparable harm if the stay is not granted.
- (4) Whether or not the public interest favors granting the stay.

/S/ Karla Bird

July 24, 2003

Karla Bird, Field Manager  
Andrews Resource Area

Date